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Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

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JAN 29 1997

In the Matter of	)	Federal Communications Commission
	)	Office of Secretary
Access Charge Reform	)	CC Docket No. 96-262
	)	
Price Cap Performance Review	)	
for Local Exchange Carriers	)	CC Docket No. 94-1
	)	
Transport Rate Structure	)	CC Docket No. 91-213
and Pricing	)	
	)	
Usage of the Public Switched	)	
Network by Information Service	)	CC Docket No. 96-263
and Internet Access Providers	)	

**COMMENTS OF TELEPORT COMMUNICATIONS GROUP INC.**

/

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### Summary

TCG's recommendations made in these Comments serve two objectives -- the same objectives, TCG believes, that motivate the Commission in initiating this proceeding. The first is to encourage the implementation of rate structure reforms that more closely align rates with the way costs are incurred and that eliminate artificial limitations or inhibitions on competition; the second is to reform price levels through genuine market-based competition. To best achieve these goals, TCG urges the Commission to measure any proposed access charge reform against three fundamental principles, the "ABCs" of access charge reform: "A", Addressability, "B", Based on Costs, and "C", Competition Enhancing.

First, access charges must be *Addressable* by competition for consumers to have choice, and for the Commission to have confidence that prices are being driven to fair economic costs. "Addressable" in this context means that all access charges should be based on services, functions or facilities for which the customer has (or reasonably could have) the choice of a competitor's services. Second, access charges must be *Based on Economic Costs*. ILECs should be given the flexibility to set prices within a bounded range which will permit a gradual adjustment to new costing principles in access charges, and will allow competition to "compete away" excess costs from the access marketplace. Third, access charges must be *Competition Enhancing*. Prices based on market prices, rather

than regulatory rules are more likely to lead to appropriate results -- provided that deregulation is not prematurely introduced.

Any access charge reform and deregulatory policy that passes the ABCs test will help ensure that a CLEC can meet the greatest challenge that it faces today: establishing the economies of scale necessary to allow it to compete aggressively and on a sustained basis with the ILEC -- the same approach that served as a catalyst to competition when Special Access was made competitive.

However, a prematurely deregulated monopoly could endanger the pro-competitive objectives of the 1996 Act, and the broader pro-competitive objectives expressed by the Commission itself in its Interconnection Proceeding and this Notice. TCG recommends that the Commission avoid "front end loading" extremely substantial deregulatory relief for the ILECs, before meaningful local facilities-based competition is observed in the market. Unlike the FCC's deregulation of AT&T in the long distance market, or the experiences in the Special Access market, the Commission's market-based approach as proposed in the Notice would give the ILEC substantial deregulation before competition is evident.

TCG believes that the Commission should conduct access rate reform in three phases. In Phase I, coincident with establishing Universal Service policies, the Commission should implement basic rate structure reforms as discussed herein. The Commission should then allow ample time to measure the success of these substantial rate reforms. The second stage, Phase II, should occur with

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Separations reform because Separations reform will lead to significant changes in the interstate costs assigned to Switched Access. These actions will act as a catalyst in promoting the development of sustainable competition. At this point, and as the Commission has so often done in the past, it can begin to evaluate the conditions in the marketplace and determine whether further deregulation is warranted, which then can be implemented in Phase III. This approach is consistent with the Commission's past deregulatory actions and will help ensure that sustainable competition will result from the Commission's access reforms.

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**COMMENTS OF TELEPORT COMMUNICATIONS GROUP INC.**

Teleport Communications Group Inc. (TCG) hereby submits its Comments, pursuant to the Notice of Proposed Rulemaking issued in the above-captioned docket.<sup>1</sup>

**I. INTRODUCTION.**

TCG is the nation's oldest and largest competitive local carrier. When it began offering Special Access services in the New York market some ten years ago, TCG provided interexchange carriers (IXCs) with their first alternative to

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<sup>1</sup>In the Matter of Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, Usage of the Public Switched Network by Information Service and Internet Access Providers, Notice of Proposed Rulemaking, Third Report and Order and Notice of Inquiry (Notice), CC Docket No. 96-262, issued December 24, 1996.

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NYNEX's services. Over time, as TCG's services were accepted by more customers, including retail users of private line services, NYNEX responded by improving the quality, prices, and timeliness of its Special Access and private line services. This Commission did not have to take regulatory action to reform Special Access.

In the years since TCG began in the local competitive industry, other companies have entered local markets. Interexchange carriers such as AT&T, MCI, and Worldcom, for example, are poised to offer local service, but as yet those local competitive efforts are very small relative to the long distance components of the overall firm. Only TCG, of the major national competitive local entrants, can be truly characterized as a "pure" facilities-based competitive LEC that has its eye fixed firmly on success in the local markets. TCG's Comments in this proceeding therefore offer the unique perspective of a "pure" competitive local exchange carrier.

TCG's objectives in this proceeding are twofold: first, to encourage the implementation of rate structure reforms that better align rates with the way costs are incurred, and that eliminate artificial limitations or inhibitions on competition; and second, to reform price levels through genuine market-based competition. Those objectives are, TCG believes, the same goals that motivate this Commission.



**II. THE COMMISSION SHOULD ONLY ADOPT ACCESS CHARGE REFORMS THAT MEET ONE OR ALL OF THREE FUNDAMENTAL PRINCIPLES - THE "ABCs" OF SWITCHED ACCESS -- "A", ADDRESSABILITY; "B", BASED ON COSTS; AND "C", COMPETITION-ENHANCING.**

TCG urges the Commission to measure any proposed access charge reform against three simple, fundamental principles. Those principles stress that, to be meaningful and enduring, access reform must keep the focus on the elements that lead to successful market-based competition. TCG's calls these the "ABCs" of access charge reform.

*"A" - ADDRESSABILITY.* Access charges must be addressable by competition for consumers to have choice, and for the Commission to have confidence that prices are being driven to fair economic costs. "Addressable" in this context means that all access charges should be based on services, functions or facilities for which the customer has (or reasonably could have) the choice of a competitor's services. Thus, proposals for recovery of access charges through methods that are unaffected by competition will burden competitors and customers with supporting excess ILEC costs, and act as an inhibition on the development of competition. Such policies also remove any incentive for the ILEC to operate more effectively, since the ILEC will recover its revenues whether or not it keeps its customers.

*"B" - BASED ON COSTS.* Access charges must be based on economic costs. The Commission has, in a different context, specified Total Element Long

Run Incremental Cost ("TELRIC") as a useful standard for measuring costs, and TCG believes that TELRIC would be useful as a floor for the setting of prices for various switched access services. ILECs should be given the flexibility to set prices within a range bounded on the lower end by TELRIC and on the upper end by Part 69, FDC type costs. This will permit a gradual adjustment to new costing principles in access charges, and will allow competition to "compete away" excess costs from the access marketplace.

*"C" - COMPETITION-ENHANCING.* The best access charge reform is a healthy competitive market. Prices based on market prices, rather than regulatory rules, are more likely to lead to appropriate results -- provided that deregulation is not prematurely introduced. Special Access reform, while limited both geographically and in scope of services, nonetheless has led over time to substantial reductions in DS3 and DS1 prices, and substantial improvements in DS3 and DS1 quality. The same pro-consumer results can be obtained in the larger switched access marketplace by creating an environment where competition can be effective, and where competitors have access to the same revenue streams as the incumbent. By establishing an environment where competitors have a fair opportunity to compete against the ILEC, the Commission can rely on competition to drive prices to reasonable levels.

These simple "ABCs" provide the Commission with a consistent litmus test against which each access reform proposal can be measured for: indeed, by

following the ABCs the Commission can promote investment in the telecommunications infrastructure and could avoid entering into a separate proceeding to address infrastructure development.<sup>2</sup> Any access charge reform and deregulatory policy that passes the ABCs test will help ensure that a CLEC can meet the greatest challenge that it faces today: establishing the economies of scale necessary to allow it to compete aggressively and on a sustained basis with the ILEC. This is exactly the approach that worked so successfully when Special Access was made competitive. Through initial competition for Special Access, TCG and other competitive access providers were able to build their initial networks. Later, those competitors were able to start competing for "retail" private line and other dedicated services. Special Access competition was thus a catalyst for the entire competitive process. Similarly, switched access competition is the only catalyst the FCC has available to it to initiate switched services competition.

The essence of the catalytic effect is establishing a core economy of scale for competitors. To meet the Commission's goals of breaking the local bottleneck and encouraging local competition, the Commission must do what it can to create the catalyst. For example, permitting and encouraging tandem switching

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<sup>2</sup>See Telecommunication Reports, Jan. 20, 1997, p. 21, "FCC Hears Wall Street Concerns on Infrastructure Investment," claiming that FCC may be close to issuing an NOI to determine how it can promote investment in the public switched network.

competition is a useful first step. Because of FCC policies, tandem switching and transport competition has been artificially repressed. Eliminating those artificial pricing policies that inhibit tandem competition will help foster the development of a competitive market for all local switched services. As a second step, reforming other elements of switched access, while still providing a fair competitive opportunity, will further aid in stimulating local facilities-based competition.

### III. THE CHALLENGE OF REFORMING ACCESS CHARGES.

By this Notice, the Commission undertakes a substantial review of its regulation of switched access. Such a review is certainly appropriate in light of the major industry changes promised by the Telecommunications Act of 1996.<sup>3</sup> While the Commission's prior regulatory efforts in connection with switched access were dominated by its desire to balance competitive conditions in the long distance market, this current review must be undertaken for the purpose of encouraging local competition.<sup>4</sup>

The Commission's Notice has two parts. First, the Commission proposes a variety of *rate structure* reforms to rationalize the recovery of switched access

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<sup>3</sup>Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, *to be codified at* 47 U.S.C. §§151 *et. seq.* (1996 Act).

<sup>4</sup>As the Commission states in this Notice, "[w]e seek to reform our system of interstate access charges to make it compatible with the competitive paradigm established by the 1996 Act and with state actions to *open local networks to competition.*" Notice at ¶1 (emphasis added).

costs. Many of those suggestions are fine and appropriate, and TCG largely supports them. Second, the Commission proposes two alternative ways to reform *rate levels*: a permissive or market-based approach, and a prescription or regulatory-based approach. While TCG supports the overall principles that the Commission is recommending, TCG parts company with the Commission over the implementation and timing of those changes.

***The Rate Structure Proposals.*** TCG generally supports the Commission's proposals concerning switched access restructuring. In particular, TCG strongly supports the Commission's desire to reform its anti-competitive and anti-consumer tandem switching and tandem transport rate structures. These structures have had the effect of inhibiting the development of competition in an area of the market that would otherwise be a natural point for competition to intercede. Thus, the current rate structure has made it impossible for competitors to develop the economy of scale needed to compete for residential and small business POTS service. Moreover, these rate structure reforms are not discretionary or debatable: they are mandated by the holdings of the United States Court of Appeals.<sup>5</sup>

Generally, TCG supports the Commission's recommendation that non-traffic sensitive costs should be recovered through non-traffic sensitive rate elements, and that traffic sensitive charges should be used only where costs genuinely vary

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<sup>5</sup>*Competitive Telecommunications Association v. FCC*, 87 F.3d 522 (D.C. Cir.1996) (*Comptel v. FCC*).

with usage. For example, TCG supports the proposal that the costs of switching functions should be separated into the non-traffic sensitive elements, such as ports, whose costs should be recovered on a flat-rated basis, versus usage sensitive elements, whose costs should be recovered from usage-based charges as described more fully herein. This type of reform satisfies the fundamental "ABCs" test.

***The Rate Level Proposals.*** TCG is much less enthusiastic about the Commission's proposals on how rate level changes should be encouraged. TCG has always favored the use of market-based approaches to improve the quality and lower the pricing of Incumbent Local Exchange Carrier (ILEC) services. History has demonstrated that a market-based approach, if done properly, can be very successful. In the access area, for example, the prices of Special Access services have dropped substantially, and the quality, variety and timeliness of Special Access services have improved dramatically in the ten years that TCG has been competing in this field. These consumer benefits were achieved by the market with little or no regulatory intervention by this Commission. Instead, the Commission waited until Special Access competition was at least noticeable in the marketplace before considering whether to liberalize its regulation of the ILEC's Special Access rates. That gradual approach to deregulation worked; Special Access competition was the catalyst for private line "retail" competition.

A second example of the market-based approach working successfully can be found in the long distance market. The Commission took affirmative steps to protect and encourage the development of long distance competition in its formative years; an approach that functioned as a catalyst until IXCs could develop economies sufficient to effectively compete with AT&T. Competitors in the Local Market should be afforded the same opportunity. More importantly, the Commission did not begin to liberalize its regulation of AT&T until competition was robust and established. Even then, it deregulated AT&T gradually, as effective competition in particular long distance markets was evident. That approach has worked.

Because of the success of the Commission's previous approaches to creating a catalyst for competition and then deregulating when the catalyst has demonstrably worked, TCG has serious concerns with the Commission's proposed radical departure from past practice in the "market-based approach" as proposed in the Notice. The Commission's proposal would "front end load" substantial deregulatory relief for the ILECs, long before any sustainable or meaningful local facilities-based competition could be observed in the market. A prematurely deregulated monopoly could endanger the pro-competitive objectives of the 1996 Act, and the broader pro-competitive objectives expressed by the Commission itself in its Interconnection Proceeding.

Unlike the FCC's deregulation of AT&T in the long distance market, or the experiences in the Special Access market, the Commission's market-based approach as proposed in the Notice would give the ILEC substantial deregulation *before* competition is evident, not after. Additionally, TCG believes that significant price level reforms will be difficult, if not impossible, until the Commission and the states reform Universal Service funding, and reform the current allocation of ILEC costs to Switched Access services pursuant to the Separations process.

Since regulation is a substitute for competition, TCG sees no basis for the Commission to depart from its established and highly successful practice of awaiting the actual development of competition before considering or implementing any deregulation of the incumbent monopoly.

***The Right Way to Switched Access Rate Reform.*** TCG believes that switched access reform needs to proceed in the same way that the FCC has reformed the long-distance and special access markets -- in several stages rather than a flash-cut as proposed in the Notice. In the first stage, the Commission should implement basic rate structure reforms, largely along the lines laid out in the Notice, which generally proposes to associate switched access charges with their appropriate underlying costs. Those rate structure reforms should, at a minimum, be coincident with the corresponding changes in Universal Service policies. Because those rate structure reforms are substantial and complex, the Commission should allow time for the industry to adapt to those changes before introducing



more instability into the system through ILEC deregulation. Moreover, by first implementing rate structure reforms without any additional changes to the access charge regime, the Commission can more easily measure whether those particular changes meet the ABCs test because the Commission only will have to measure those discrete aspects of access charge reform. The second stage of access reform logically should occur simultaneous with Separations reform because Separations reform will lead to significant changes in the interstate costs assigned to Switched Access.

Once Switched Access rate structures have been reformed, Universal Service policies put into place, and Separations reforms implemented, price levels in Switched Access will begin to approach reasonable levels because, as described more fully herein, these actions will act as a catalyst in promoting the development of sustainable facilities-based local competition. At that point the Commission, consistent with past successful precedent, can begin to evaluate whether conditions in the marketplace have begun to approach the competitive levels justifying any liberalization in its regulation of the ILECs. The third stage of access charge reform, therefore, will present the Commission with the opportunity to implement additional regulatory reforms.

This three-stage process will allow the Commission to remove the problems in its access regime in a way that permits competition to develop and provides an

opportunity for the Commission to accurately assess the results of each phase of Switched Access reform, one stage at a time.

**IV. SWITCHED ACCESS RATE STRUCTURES MUST REFLECT HOW COSTS ARE INCURRED TO ACHIEVE THE PRO-COMPETITIVE GOALS SET FORTH IN THE 1996 ACT.  
(¶¶55-139)**

**A. TANDEM TRANSPORT FACILITIES: THE COMMISSION MUST REFORM THE CURRENT ANTI-COMPETITIVE, DISCRIMINATORY AND NON-COST-BASED TANDEM TRANSPORT RATE STRUCTURE.  
(¶¶80-86)**

The Commission's current local transport rate structure for tandem switched calls does not accurately recognize how costs are incurred in the actual provision of the service. That structure is discriminatory, not cost based, competition inhibiting, and anti-consumer in its effect. The Commission properly recognizes the need to change that structure, and TCG encourages the Commission to do so promptly and completely.<sup>6</sup>

There are two facilities used to provide tandem transport. The first element is the connection from the IXC to the tandem switch. That facility is a Dedicated Transport facility, exclusively used by a single IXC and indistinguishable from the Dedicated Transport facilities used to connect IXCs directly to end offices. The

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<sup>6</sup>By contrast, the Commission's current structure for Entrance Facilities and Dedicated (direct) Trunking was reformed in the Commission Local Transport Restructure proceeding. See In the Matter of Transport Rate Structure and Pricing, Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 91-213, issued October 16, 1992. TCG does not see any need for any further reforms or changes in the current treatment of those service elements.

second element of tandem transport is the facility that connects the tandem switch to the ultimate end office. That facility -- generally referred to as a "Common Transport" facility -- is used to carry calls that are associated with many different interexchange carriers.

While IXC's must pay flat-rated (Special Access type) charges for Dedicated Transport to end offices, the Commission has given IXC's two options for purchasing tandem transport. The first option permits them to purchase tandem transport facilities on a minutes-of-use basis, with mileage measured from the IXC's location to the ultimate end office. Under the second alternative, the IXC pays flat-rated charges for the Dedicated Transport facility from the IXC's location to the tandem, and minutes-of-use charges for the transport facility from the tandem to the ultimate end office. The Commission asks whether it should retain or eliminate the first option of paying minutes-of-use charges for the entire tandem transport facility.

There can be only one answer to that question: this discriminatory, non-cost based and anti-competitive option must be eliminated. It is discriminatory, since it allows purchasers of Dedicated Transport facilities used in connection with Tandem Transport to purchase service at prices not available to other purchasers of Dedicated Transport. Therefore, it does not satisfy the "C" of the ABCs test -- it is not competition enhancing. It is non-cost based, since it ignores the fact that there are two separate transport facilities, ignores the fact that one is entirely

dedicated to a particular IXC, and ignores the fact that the facility's actual mileage is higher than the assumed mileage that is computed between the IXC location and the ultimate end office.<sup>7</sup> Therefore, it also does not satisfy the second criteria of the ABCs test, "B" -- based on cost.

Finally, this rate structure is anti-competitive and anti-consumer. Arguably, it *requires* the ILECs to charge obviously and systematically below cost rates, which can only inhibit the ability of competitors to offer an alternative. Because the availability of those below cost rates is tied to the purchase of tandem switching, it inhibits the development of competition for tandem switching services. Moreover, even if a Competitive Local Exchange Carrier (CLEC) was successful in offering an alternative tandem transport service, the CLEC (or its customer) is forced to subsidize the ILEC's below cost tandem transport rates.<sup>8</sup> The result is to prevent any possible catalytic action that would permit the creation

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<sup>7</sup>In essence, the actual facility routing of a tandem switched call requires two "legs" -- one from the IXC to the tandem and a second from the tandem to the end office. The Commission's minutes of use option ignores this reality, and calculates mileage based on the distance from the IXC to the end office, or the hypotenuse of the triangle formed by the IXC, Tandem and End Office. Since the two legs of a triangle will always exceed the hypotenuse, the Commission's minutes of use systematically understates the actual mileage of the tandem transport facility.

<sup>8</sup>The tandem transport costs that are not recovered due to the fact that these below cost rates are assigned to the Residual Interconnection Charge ("RIC"). Even if an IXC uses 100% CLEC tandem transport trunks, it is nonetheless obligated to pay RIC charges on its traffic (because the RIC charge currently is assigned to the end office), and thus IXCs are obligated to subsidize the below cost transport rates of the ILEC even though it does not use them.

of the economies of scale necessary to compete in an effective and sustainable way against the ILECs.

Accordingly, there can be no question that this structure does not meet the ABCs test, and therefore the Commission must remove this minutes-of-use option. This option inaccurately associates rates and costs. As the Commission recognizes, "[a]ssignment of costs to the wrong elements may also contribute to high per-minute interstate access rates,"<sup>9</sup> and can distort competition in the markets for local exchange access. Removing this option, therefore, is necessary for competition to develop in tandem transport and tandem switching. Removal of this option will also help reduce the revenues that are currently associated with the Residual Interconnection Charge, thereby aiding the Commission in its desire to eliminate that charge. Last, removing this option will meet the second and third letters of the ABC test -- it will allow charges to be more accurately based on costs and will enhance competition.

TCG therefore recommends that the Commission require that the facility between the IXC and the tandem switch be rated as a Dedicated Transport facility.<sup>10</sup> As the Commission correctly notes, "[t]hese transport facilities appear

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<sup>9</sup>Notice at ¶44.

<sup>10</sup>To the extent that the use of tandem switching requires the use of associated multiplexing facilities to connect the Dedicated Transport facilities to the tandem switch, TCG would similarly endorse a requirement that the costs of those multiplexers be charged to the customer who is using the facility. This, too, will reduce the amount of unassigned costs that are today flowing into the RIC charge,

to be dedicated to individual customers, and we believe that flat rates reflect the way incumbent LECs incur costs for dedicated facilities."<sup>11</sup> This is, after all, an option already available even under the Commission's current policies. More importantly, it properly recognizes the dedicated nature of this facility, and eliminates the potential for discrimination versus the charges assessed for similar dedicated transport facilities to end offices. As the Commission stated in its Interconnection Order, "[no] commenters take issue with . . . the principle that the costs of dedicated facilities should be recovered through flat rates."<sup>12</sup> Thus, this proposal passes the "ABC" test.

The Commission also asks whether it could eliminate the minutes-of-use pricing option for Common Transport, and instead impose a flat-rate charge, presumably associated with the purchase of tandem switching ports.<sup>13</sup> Although TCG does not oppose this flat-rate option in principle, TCG would prefer continuation of the existing usage-based recovery methodology for Common

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thereby meeting the second prong of the ABC test ("B" -- Based on Costs") by more closely associating charges with their direct underlying costs. See Notice at ¶106.

<sup>11</sup>Notice at ¶86.

<sup>12</sup>Interconnection Order at ¶742 and fn. 1766.

<sup>13</sup>The Commission states that "shared tandem switching costs may be driven by the number of trunks on the end-office side and the SWC side of the tandem switch, just as shared local switching costs may be driven by the number of lines and trunks connected to the switch. If this is the case, then flat monthly rates may better reflect shared tandem switching costs." Notice at ¶89.

Transport, because of the issues that arise in the application of this option in an increasingly interconnected network. For example, if a TCG switch is subtending an ILEC tandem, and TCG supplies transport from its switch to the ILEC tandem, TCG would be entitled to receive the revenues associated with that Common Transport.

Accordingly, if the Commission were to adopt a policy whereby Common Transport could be recovered through flat-rate charges, it would be necessary that the Commission require that the Common Transport revenues be unbundled from other aspects of tandem switching and tandem transport. Unless common transport revenues are unbundled, alternative providers of such facilities will be disadvantaged in providing such capabilities, and may not be properly compensated. Thus, eliminating the minutes-of-use pricing option for Common Transport without unbundling the Common transport revenues from other aspects of tandem switching and tandem transport fails to meet the ABCs test by inhibiting competition ("C"), deterring a direct association of charges with underlying costs ("B"), and failing to address the charges directly to the particular function or facility ("A").

**B. TANDEM SWITCHING: THE COMMISSION MUST REFORM THE  
CURRENT ANTI-COMPETITIVE, DISCRIMINATORY AND BELOW  
COST TANDEM SWITCHING RATE STRUCTURE.  
(¶¶87-96)**

The Commission's current charge for tandem switching was intentionally set below cost. In 1992, the Commission required that the charge for tandem switching recover only 20% of the tandem switching costs assigned to the interstate jurisdiction. The remaining 80% would be recovered through the so-called Residual Interconnection Charge ("RIC"), which would be paid by all users of Switched Access.<sup>14</sup> Thus, the Commission's rules have suppressed the most powerful jurisdictional catalyst for local competition for five years, through the use of a rate structure that violated the ABCs test.

Last summer, the United States Court of Appeals held that the Commission did not justify the RIC, and remanded to the Commission with orders that it correct this shortcoming.<sup>15</sup> In particular, the Court noted that the mandate of below-cost pricing of tandem switching harmed the potential for competition in the provision

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<sup>14</sup>Notice at ¶¶80 and 82.

<sup>15</sup>The Court stated that "[T]he attempt to recover costs from IXCs that did not cause those costs to be incurred would impart the wrong incentives to both actual and potential providers of local transport, thereby inducing them to offer an inefficient mix of dedicated, DDT, and tandem-switched service." *Comptel v. FCC*, 87 F.3d at 530-31.



of those services.<sup>16</sup> Simply put, it was not "addressable," it was not "based on costs," and it was not "competition enhancing."

The Commission recommends that the costs of tandem switching no longer be recovered through the RIC charge. This recommendation serves as a major catalyst in developing competitive network facilities and the economies of scale necessary to support sustainable competitive local telecommunications competition. Additionally, the Commission recommends that the costs of tandem switching be divided into traffic sensitive and non-traffic sensitive components. The non-traffic sensitive elements, such as ports, would be recovered on a flat-rated basis -- perhaps a flat monthly charge per DS1 port, for example. As the Commission correctly acknowledges, line-side ports and dedicated trunk-side ports vary with the number of transmission facilities connected to the port, not the level of traffic over those ports. In other words, the costs associated with ports are incurred when an additional port is installed; thus, the port costs are "lumpy" one-time occurrences. Several states have concluded, after formal hearing and review of extensive testimony, that capacity-based charges best reflect the costs for ports.<sup>17</sup>

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<sup>16</sup>"Rates for tandem switching that do not reflect the full cost of providing that service will discourage competitors with more efficient transport alternatives from entering the market." Id. at 531.

<sup>17</sup>In analyzing co-carrier compensation structures, for example, the Washington State Commission found that "[c]harging a use-based rate to recover costs that are primarily fixed in nature is likely to discriminate against certain groups of